

## CHAPTER 21-03.1 REGISTRATION OF PUBLIC OBLIGATIONS

**21-03.1-01. Definitions.** As used in this chapter, the following terms have the following meanings:

1. "Authorized officer" means any individual required or permitted, alone or with others, by any provision of law or by the issuing public entity, to execute on behalf of the public entity a certificated registered public obligation or a writing relating to an uncertificated registered public obligation.
2. "Certificated registered public obligation" means a registered public obligation which is represented by an instrument.
3. "Code" means the Internal Revenue Code of 1954, as amended.
4. "Financial intermediary" means a bank, broker, clearing corporation, or other person or the nominee of any of them, which in the ordinary course of its business maintains registered public obligation accounts for its customers, when so acting.
5. "Issuer" means a public entity which issues an obligation.
6. "Obligation" means an agreement of a public entity to pay principal and any interest thereon, and includes a share, participation, or other interest in any such agreement.
7. "Official actions" means the actions by statute, order, ordinance, resolution, contract, or other authorized means by which the issuer provides for issuance of a registered public obligation.
8. "Official or official body" means the officer that is empowered under the laws of this state to provide for original issuance of an obligation of the issuer, by defining the obligation and its terms, conditions, and other incidents, the successor or successors of any such official or official body, and such other person or group of persons as shall be assigned duties of such official or official body with respect to a registered public obligation under applicable law from time to time.
9. "Public entity" means any entity, department, or agency which is empowered under the laws of this state to issue obligations any interest with respect to which may, under any provision of law, be provided an exemption from the income tax referred to in the Code.
10. "Registered public obligation" means an obligation issued by a public entity pursuant to a system of registration.
11. "System of registration" and its variants means a plan that provides:
  - a. With respect to a certificated registered public obligation, that:
    - (1) The certificated registered public obligation specify a person entitled to the registered public obligation and the rights it represents; and
    - (2) Transfer of the certificated registered public obligation and the rights it represents may be registered upon books maintained for that purpose by or on behalf of the issuer.
  - b. With respect to an uncertificated registered public obligation, that:

- (1) Books maintained by or on behalf of the issuer for the purpose of registration of the transfer of a registered public obligation specify a person entitled to the registered public obligation and the rights evidenced thereby; and
  - (2) Transfer of the uncertificated registered public obligation and the rights evidenced thereby be registered upon such books.
12. "Uncertificated registered public obligation" means a registered public obligation which is not represented by an instrument.

**21-03.1-02. System of registration.**

1. Each issuer is authorized to establish and maintain a system of registration with respect to each obligation which it issues. The system may either be:
  - a. A system pursuant to which only certificated registered public obligations are issued.
  - b. A system pursuant to which only uncertificated registered public obligations are issued.
  - c. A system pursuant to which both certificated and uncertificated registered public obligations are issued.

The issuer may amend, discontinue, and reinstitute any system, from time to time, subject to covenants.

2. The system must be established, amended, discontinued, or reinstituted for the issuer by, and must be maintained for the issuer as provided by, the official or official body.
3. The system must be described in the registered public obligation or in the official actions which provide for original issuance of the registered public obligation, and in subsequent official actions providing for amendments and other matters from time to time. Such description may be by reference to a program of the issuer which is established by the official or official body.
4. The system must define the method or methods by which transfer of the registered public obligation shall be effective with respect to the issuer, and by which payment of principal and any interest must be made. The system may permit the issuance of registered public obligations in any denomination to represent several registered public obligations of smaller denominations. The system may also provide for the form of any certificated registered public obligation or of any writing relating to an uncertificated registered public obligation, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to holders or owners of obligations, and for accounting, canceled certificate destruction registration and release of security interests and other incidental matters. Unless the issuer otherwise provides, the record date for interest payable on the first or fifteenth day of a month must be the fifteenth day or the last business day of the preceding month, respectively, and for interest payable on other than the first or fifteenth day of a month, must be the fifteenth calendar day before the interest payment date.
5. Under a system pursuant to which both certificated and uncertificated registered public obligations are issued, both types of registered public obligations may be regularly issued, or one type may be regularly issued and the other type issued only under described circumstances or to particular described categories of owners and

provision may be made for registration and release of security interests in registered public obligations.

6. The system may include covenants of the issuer as to amendments, discontinuances, and reinstitutions of the system and the effect of such on the exemption of interest from the income tax provided for by the Code.
7. Whenever an issuer issues an uncertificated registered public obligation, the system of registration may provide that a true copy of the official actions of the issuer relating to such uncertificated registered public obligation be maintained by the issuer or by the person, if any, maintaining such system on behalf of the issuer, so long as the uncertificated registered public obligation remains outstanding and unpaid. A copy of such official actions, verified to be such by an authorized officer, is admissible before any court of record, administrative body, or arbitration panel without further authentication.
8. Nothing in this chapter precludes a conversion from one of the forms of registered public obligations provided for by this chapter to a form of obligations not provided for by this chapter if interest on the obligation so converted will continue to be exempt from the income tax provided for by the Code.
9. The rights provided by other laws with respect to obligations in forms not provided for by this chapter, to the extent not inconsistent with this chapter, apply with respect to registered public obligations issued in forms authorized by this chapter.

#### **21-03.1-03. Execution - Authentication.**

1. A certificated registered public obligation must be executed by the issuer by the manual or facsimile signature or signatures of authorized officers. Any signature of an authorized officer may be attested by the manual or facsimile signature of another authorized officer.
2. In addition to the signatures referred to in subsection 1, any certificated registered public obligation or any writing relating to an uncertificated registered public obligation may include a certificate or certificates signed by the manual or facsimile signature of an authenticating agent, registrar, transfer agent, or the like.
3. At least one signature of an authorized officer or other person required or permitted to be placed on a certificated registered public obligation must be a manual signature.

#### **21-03.1-04. Signatures.**

1. Any certificated registered public obligation signed by the authorized officers at the time of the signing thereof remains valid and binding, notwithstanding that before the issuance thereof any or all of such officers have ceased to fill their respective offices.
2. Any authorized officer empowered to sign any certificated registered public obligation may adopt as and for the signature of such officer the signature of a predecessor in office in the event that such predecessor's signature appears on such certificated registered public obligation. An authorized officer incurs no liability by adoption of a predecessor's signature that would not be incurred by such authorized officer if the signature were that of such authorized officer.

**21-03.1-05. Seal.** When a seal is required or permitted in the execution of any certificated registered public obligation, an authorized officer may cause the seal to be printed, engraved, stamped, or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal.

#### **21-03.1-06. Agents - Depositories.**

1. An issuer may appoint for such term as may be agreed, including for so long as a registered public obligation may be outstanding, corporate or other authenticating agents, transfer agents, registrars, paying, or other agents, specify the terms of their appointment, including their rights, their compensation and duties, limits upon their liabilities, and provision for their payment of liquidated damages in the event of breach of certain of the duties imposed, which liquidated damages may be made payable to the issuer, the owner, or a financial intermediary. None of such agents need have an office or do business within this state.
2. An issuer may agree with custodian banks and financial intermediaries, and nominees of any of them, in connection with the establishment and maintenance by others of a central depository system for the transfer or pledge of registered public obligations. Any such custodian banks and financial intermediaries, and nominees, may, if qualified and acting as fiduciaries, also serve as authenticating agents, transfer agents, registrars, paying, or other agents of the issuer with respect to the same issue of registered public obligations.
3. Nothing precludes the issuer from itself performing, either alone or jointly with other issuers, any transfer, registration, authentication, payment, or other function described in this section.

#### **21-03.1-07. Costs - Collection.**

1. An issuer, prior to or at original issuance of registered public obligations, may provide as a part of a system of registration that the transferor or transferee of the registered public obligations pay all or a designated part of the costs of the system as a condition precedent to transfer, that costs be paid out of proceeds of the registered public obligations, or that both methods be used. The portion of the costs of the system not provided to be paid for by the transferor or transferee or out of proceeds is the liability of the issuer.
2. The issuer may as part of a system of registration provide for reimbursement or for satisfaction of its liability by payment by others. The issuer may enter into agreements with others respecting such reimbursement or payment, may establish fees and charges pursuant to such agreements or otherwise, and may provide that the amount or estimated amount of such fees and charges must be reimbursed or paid from the same sources and by means of the same collection and enforcement procedures and with the same priority and effect as with respect to the obligations.

**21-03.1-08. Security for deposits.** Obligations issued by public entities under the laws of this state which are in registered form, whether or not represented by an instrument, and which, except for their form, satisfy the requirements with regard to security for deposits of moneys of public agencies prescribed pursuant to any law of this state, must be deemed to satisfy all such requirements even though they are in registered form if a security interest in such obligations is perfected on behalf of the public agencies whose moneys are so deposited.

#### **21-03.1-09. Public records - Locations.**

1. Records, with regard to the ownership of or security interests in registered public obligations, are not subject to inspection or copying under any law of this state relating to the right of the public to inspect or copy public records, notwithstanding any law to the contrary.
2. Registration records of the issuer may be maintained at such locations within or without this state as the issuer shall determine.

#### **21-03.1-10. Applicability - Determination.**

1. Unless at any time prior to or at original issuance of a registered public obligation the official or official body of the issuer determines otherwise, this chapter is applicable to such registered public obligation notwithstanding any provision of law to the contrary. When this chapter is applicable, no contrary provision applies.
2. Nothing in this chapter limits or prevents the issuance of obligations in any other form or manner authorized by law.
3. Unless determined otherwise pursuant to subsection 1, the provisions of this chapter are applicable with respect to obligations which have heretofore been approved by vote, referendum, or hearing, authorizing or permitting the authorization of obligations in bearer and registered form, or in bearer form only, and such obligations need not be resubmitted for a further vote, referendum, or hearing, for the purpose of authorizing or permitting the authorization of registered public obligations pursuant to this chapter.

**21-03.1-11. Construction.** This chapter must be construed in conjunction with the Uniform Commercial Code and the principles of contract law relative to the registration and transfer of obligations.

**21-03.1-12. Amendment or repeal - Effect.** The state hereby covenants with the owners of any registered public obligations that it will not amend or repeal this chapter if the effect may be to impair the exemption from income taxation of interest on registered public obligations.